

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

S.D.,

Plaintiff,

v.

KILOLO KIJAKAZI, et al.,

Defendants.

Case No. 23-cv-04631-NC

**ORDER REVERSING
ADMINISTRATIVE LAW
JUDGE DECISION IN PART
AND REMANDING FOR
FURTHER PROCEEDINGS**

Re: ECF 1, 7, 11, 12

Claimant S.D. appeals from an Administrative Law Judge's denial of her application for social security benefits. Claimant contends the ALJ erred in (1) rejecting medical opinion evidence; and (2) finding Claimant's testimony inconsistent with the record. This Court finds that the ALJ did not provide an explanation supported by substantial evidence for rejecting the medical opinion evidence but did give clear and convincing evidence for finding Claimant's testimony inconsistent. Accordingly, this Court reverses the ALJ's decision in part and remands for further proceedings.

I. BACKGROUND

A. Procedural History

Claimant filed for disability insurance benefits on November 15, 2017, under Title II of the Social Security Act, alleging that she had become disabled on April 22, 2017. AR 337–338. Claimant's application was denied initially and upon reconsideration. AR 134–136, 138–140. An ALJ held an administrative hearing on June 13, 2022, at which Claimant and a vocational expert testified. AR 47–49. The ALJ issued an unfavorable decision on June 29, 2022. AR 23–26. The ALJ followed the five-step analysis required

1 in disability determinations and found that (1) Claimant had not engaged in substantial
2 gainful activity since April 22, 2017, the alleged onset date; (2) Claimant had several
3 severe impairments; (3) Claimant's impairments did not meet or equal the criteria in the
4 Listing of Impairments; (4) Claimant had the residual functional capacity (RFC) to
5 perform light work as defined in 20 C.F.R. § 404.1567(b), except she was able to
6 occasionally perform postural activities and her job should not include regular interaction
7 and communication with the general public for primary duties; (5) Claimant's statements
8 concerning the intensity, persistence, and limiting effects of her symptoms were not
9 entirely consistent with the medical evidence and other evidence in the record; (6)
10 Claimant could not perform any past relevant work, and (7) that jobs existed in significant
11 numbers matching Claimant's RFC. AR 23–36. Therefore, the ALJ found that Claimant
12 was not disabled at any time from Claimant's alleged onset date of April 22, 2017, through
13 the date of the ALJ's decision. AR 36. Claimant timely filed a complaint with this Court
14 on September 11, 2023. ECF 1. All parties have consented to magistrate judge
15 jurisdiction. ECF 3, 5.

16 **B. Factual History**

17 **1. Medical Opinion Evidence**

18 Claimant challenges the ALJ's weighing of opinions from physicians Dr.
19 Radabaugh, Dr. Regets, and Dr. Brown. This Court briefly summarizes the findings of
20 those physicians below.

21 **a. Dr. Radabaugh**

22 Dr. Radabaugh performed a psychological consultative examination of Claimant on
23 March 26, 2018. AR 810–815. Dr. Radabaugh opined that Claimant's functioning in
24 several areas was fair to poor. AR 810–815.

25 **b. Dr. Regets**

26 Dr. Regets completed a mental RFC assessment, finding, among other things, that
27 Claimant was capable of understanding, carrying out, and remembering short, simple, and
28 well-learned instructions on a regular basis in a competitive work environment through a

1 normal workday/workweek while remaining focused and attentive for extended, two-hour
2 or more segments. AR 92. Dr. Regets found that Claimant would be able to work in an
3 independent work setting requiring only quick and short social demands/interactions with
4 the general public and coworkers. AR 92. Dr. Regets also opined that Claimant had the
5 ability to ask and accept simple instructions. AR 92. Dr. Regets found that Claimant had
6 depressive, bipolar and related disorder, and anxiety and obsessive-compulsive disorders.
7 AR 89. Dr. Regets found that Claimant had moderate impairments in the ability to interact
8 with others and moderate impairments in concentration, persistence, or pace, as well as no
9 limitations in understanding, remembering, or applying information and adapting or
10 managing oneself. AR 89.

11 **c. Dr. Brown**

12 Dr. Brown made similar findings to Dr. Regets but also included the ability to
13 function with well-learned semi-skilled work. AR 129.

14 **2. Symptom Testimony**

15 Claimant testified that the following impairments limit her ability to work: bipolar
16 disorder, depression, anxiety, grief, thyroid, arthritis, bladder leakage, stress, oral lichen
17 planus, and carpal tunnel syndrome. AR 28. She reported she is 5'3" and 226 pounds,
18 establishing the presence of obesity, and she is unable to lose weight because of her
19 thyroid problems. AR 28–29. Claimant testified that she does not engage in any social
20 activities, reported conflict with her landlord, and said she had lost a job due to erratic
21 behavior. AR 28. Claimant stated that she has been unable to work since her boyfriend
22 died in 2017, which caused her to develop PTSD. AR 29. Claimant testified that she is
23 tired frequently because of her depression and thyroid problems. AR 29.

24 **II. LEGAL STANDARD**

25 A district court has the “power to enter, upon the pleadings and transcript of the
26 record, a judgment affirming, modifying, or reversing the decision of the Commissioner of
27 Social Security, with or without remanding the case for a rehearing.” 42 U.S.C. § 405(g).
28 Courts reviewing an ALJ decision “must consider the entire record as a whole.” *Garrison*

1 v. *Colvin*, 759 F.3d 995, 1010 (9th Cir. 2014).

2 A court should disturb the decision of the Commissioner only if it is not supported
3 by substantial evidence or if it is based on legal error. *Burch v. Barnhart*, 400 F.3d 676,
4 679 (9th Cir. 2005). Substantial evidence is evidence that a reasonable mind would accept
5 as adequate to support the conclusion. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th
6 Cir. 2005) (“[It] is more than a mere scintilla but less than a preponderance.”). Even when
7 the ALJ commits legal error, the decision must be upheld if the error is harmless.
8 *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1099 (9th Cir. 2014). “A
9 reviewing court may not make independent findings based on the evidence before the ALJ
10 to conclude that the ALJ’s error was harmless.” *Brown-Hunter v. Colvin*, 806 F.3d 487,
11 492 (9th Cir. 2015). Where evidence is susceptible to more than one rational
12 interpretation, the ALJ’s decision should be upheld. *Andrews v. Shalala*, 53 F.3d 102,
13 1039–40 (9th Cir. 1995).

14 **III. DISCUSSION**

15 This Court addresses Claimant’s two challenges to the ALJ’s decision: (1) weighing
16 of medical evidence, and (2) consistency determination on Claimant’s symptom testimony.

17 **A. Medical Opinion Evidence**

18 An ALJ must consider all medical opinion evidence. See *Tommasetti v. Astrue*, 533
19 F.3d 1035, 1038 (9th Cir. 2008). And where medical opinions contradict one another, the
20 ALJ must resolve the conflict. *Andrews*, 53 F.3d at 1041 (citing *Magallanes v. Bowen*,
21 881 F. 2d 747, 751 (9th Cir. 1989)). This requires “setting out a detailed and thorough
22 summary of the facts and conflicting clinical evidence, stating his interpretation thereof,
23 and making findings.” *Id.* (citing *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998)).
24 Under the revised rules, the ALJ is no longer required to defer to or assign each medical
25 opinion a specific evidentiary weight. 20 C.F.R. §§ 404.1520c(a), 416.920c(a). Instead,
26 the ALJ will articulate the persuasiveness of the medical opinions or prior administrative
27 findings, the most important factors being consistency and supportability. 20 C.F.R. §§
28 404.1520c(a)–(b), 416.920c(a)–(b); see *Woods v. Kijakazi*, 32 F.4th 785, 791–92 (9th Cir.

2022). Supportability means the extent to which a medical source supports the medical opinion by explaining the “relevant...objective medical evidence.” *Woods*, 32 F.4th at 791–92 (quoting 20 C.F.R. § 404.1520c(c)(1)). “Consistency means the extent to which a medical opinion is consistent...with the evidence from other medical sources and nonmedical sources in the claim.” *Woods*, 32 F.4th at 792 (quoting 20 C.F.R. § 404.1520c(c)(2)). Other factors may be considered, including the treatment relationship, specialization, and whether the source has familiarity with other evidence in the claim or an understanding of the disability program’s policies and evidentiary requirements. 20 C.F.R. §§ 404.1520c(a), (c), 416.829c(a), (c). Even under the new regulations, an ALJ cannot reject an examining or treating doctor’s opinion as unsupported or inconsistent without providing an explanation supported by substantial evidence. *Woods*, 32 F.4th at 792. The agency must “articulate...how persuasive” it finds “all of the medical opinions” from each doctor or source, and “explain how [it] considered the supportability and consistency factors” in reaching these findings. *Id.* (citing 20 C.F.R. § 404.1520c(b) and § 404.1520c(b)(2)).

The ALJ did not provide an explanation supported by substantial evidence for rejecting the opinion evidence from Dr. Radabaugh and prior administrative findings. Dr. Radabaugh opined that Claimant’s functioning in several areas was fair to poor. AR 810–815. The ALJ found this opinion “not persuasive,” reasoning that the assessment appeared to be based on Claimant’s own statements, and the level of dysfunction Claimant described was not documented throughout the relevant period. AR 33, 810–815. However, the ALJ did not cite specific parts of Dr. Radabaugh’s opinion that appeared to be based on Claimant’s own statements, nor provide specific and detailed reasons why he believed the assessment appeared to be based on Claimant’s own statements. The ALJ did not identify any inconsistency in history, treatment, or current level of function as assumed by Dr. Radabaugh and the medical records. The ALJ also did not point to any aspects of Dr. Radabaugh’s evaluation that do not correspond with the standard of care or the Commissioner’s direction, nor cite any medical evidence that Claimant ever regained the

1 ability to interact with others. For each of these conclusions about the issues with the
2 ALJ's evaluations of the Dr. Radabaugh opinion, the Court itself also did not find
3 substantial evidence in the record to support the ALJ's conclusions.

4 The ALJ specifically referenced Dr. Regets' State agency initial determination,
5 noting that Dr. Regets' opinion was deemed insufficient during a quality review. AR 32.
6 However, the ALJ did not discuss the details of the quality review, specifically why Dr.
7 Regets' opinion was deemed insufficient, or the methodology of the quality review. The
8 quality review assessment was not in the record, and referring to a non-exhibit fails to
9 provide a basis for assigning weight that has the support of substantial evidence. *Woods v.*
10 *Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022).

11 The ALJ specifically found that Dr. Brown's opinion was partially persuasive, but
12 the record did not support limitations in regard to interacting with coworkers or
13 supervisors, or in performing simple, repetitive tasks. AR 33. In assessing Claimant's
14 disability claim, the ALJ noted that Claimant did not have any cognitive impairments, and
15 there was no evidence of significant limitations in this area, other than Dr. Radabaugh's
16 report showing possible learning disorder. AR 26–27, 810–815. The ALJ also noted that
17 in later examinations in August 2019, October 2019, November 2020, December 2020,
18 January 2021, and April 2021, Claimant continued to report doing well and medical
19 reviews of systems were normal. AR 30–34, 1004–1095. The ALJ thoroughly evaluated
20 the evidence of record. AR 26–34.

21 Accordingly, this Court finds that the ALJ failed to provide an explanation
22 supported by substantial evidence for rejecting the opinion evidence of Dr. Radabaugh and
23 Dr. Regets.

24 **B. Symptom Testimony**

25 Claimant argues that the ALJ failed to properly credit her symptom testimony.
26 When evaluating a claimant's testimony about subjective symptoms, an ALJ must engage
27 in a two-step analysis. *Garrison*, 759 F.3d at 1014–1015. First, the ALJ evaluates whether
28 objective medical evidence of an underlying impairment “could reasonably be expected to

1 produce the” symptoms alleged. *Id.* (quoting *Lingenfelter v. Astrue*, 504 F.3d 1028,
2 1035–36 (9th Cir. 2007)). The claimant is not expected to show that her impairment is
3 expected to cause the severity of symptoms claimed; she only needs to show that the
4 impairment could cause some degree of symptoms. *Smolen v. Chater*, 80 F.3d 1273, 1282
5 (9th Cir. 1996). Second, if the claimant satisfies step one and there is no evidence of
6 malingering, the ALJ can reject the claimant’s testimony about the severity of his
7 symptoms only by offering specific, clear, and convincing reasons for doing so. *Id.* at
8 1281. “This is not an easy requirement to meet: the clear and convincing standard is the
9 most demanding required in Social Security cases.” *Garrison*, F.3d at 1014–15 (quoting
10 *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 290, 294 (9th Cir. 2002)) (internal
11 quotation marks omitted). General findings are insufficient; rather, the ALJ must identify
12 what testimony is not credible and what evidence undermines the claimant’s complaints.
13 *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Factors that an ALJ may consider in
14 weighing a claimant’s credibility include reputation for truthfulness, inconsistencies in
15 testimony or between testimony and conduct, daily activities, and unexplained, or
16 inadequately explained, failure to seek treatment or follow a prescribed course of
17 treatment. *Orn*, 495 F.3d at 636.

18 Here, at step one the ALJ found Claimant’s medically determinable impairments
19 could reasonably be expected to cause the alleged symptoms. AR 29. At step two, the
20 ALJ found Claimant’s statements concerning the intensity, persistence, and limiting effects
21 of these symptoms were not entirely consistent with the medical evidence and other
22 evidence in the record. AR 29.

23 The ALJ addressed inconsistencies in Claimant’s statements about the intensity,
24 persistence, and limiting effects of her symptoms in clear and convincing detail. *See*
25 *Smolen*, 80 F.3d at 1282. The ALJ stated that the medical record did not support the level
26 of dysfunction alleged by the claimant. AR 29. The ALJ identified Claimant’s testimony
27 regarding depression, manic episodes, failure of medications, and poor sleep as not
28 credible and pointed to reports in the record stating that her review of systems during

1 medical appointments at the time of this testimony was normal. AR 30. The ALJ pointed
2 to specific exhibits in the record containing testimony from Claimant that she was much
3 happier that she had her own apartment with more space and privacy, and that a large part
4 of her mood issue was living in a single room in a residence with other people. AR 30.
5 The ALJ found Claimant's issues with motivation attributable to season and living
6 circumstances and cited to Claimant's medical provider's report stating this. AR 30.
7 Finally, the ALJ acknowledged that Claimant's complaints of low energy and lack of
8 motivation were well-documented in the medical record but pointed to the fact that there
9 was marijuana use documented through 2018 and a stressful living situation through 2020,
10 with improvement noted when these factors were eliminated. AR 31.

11 Based on the ALJ's detailed review of these combined inconsistencies, this Court
12 finds the ALJ provided clear and convincing reasons for this consistency determination.

13 **IV. CONCLUSION**

14 On AR 24 and 26, the ALJ states they do not find a disability from April 2017
15 through the date of this decision. The definition of disability is for any 12 month period.
16 42 U.S.C. § 423(d)(1)(A). On remand, the ALJ should be sure to look at whether there
17 was any 12 month period from the alleged onset of disability when the claimant was
18 disabled, particularly during the time before the claimant's symptoms improved.

19 Finding that the ALJ failed to provide an explanation supported by substantial
20 evidence for rejecting the opinion evidence of Dr. Radabaugh and Dr. Regets, this court
21 REVERSES the ALJ's decision in part and REMANDS for further proceedings consistent
22 with this order.

23
24 **IT IS SO ORDERED.**

25
26 Dated: July 10, 2024



27 NATHANAEL M. COUSINS

28 United States Magistrate Judge